

Leslie S. Johnson [Oregon Bar No. 954727]  
Samuels Yoelin Kantor, LLP  
[ljohnson@samuelslaw.com](mailto:ljohnson@samuelslaw.com)  
111 SW 5th Avenue  
Suite 3800  
Portland, OR 97204

Anna M. Rathbun (*pro hac vice forthcoming*)  
Michael G. Egge  
Doug Tifft  
LATHAM & WATKINS LLP,  
555 Eleventh Street NW  
Suite 1000  
Washington, D.C. 20004  
Telephone: (202) 637-2200  
Facsimile: (202) 637-2201  
Michael.Egge@lw.com  
Anna.Rathbun@lw.com  
Doug.Tifft@lw.com

*Attorneys for Non-Party*  
*Nestlé USA*

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

---

**FEDERAL TRADE COMMISSION,  
STATE OF ARIZONA,  
STATE OF CALIFORNIA,  
DISTRICT OF COLUMBIA,  
STATE OF ILLINOIS,  
STATE OF MARYLAND,  
STATE OF NEVADA,  
STATE OF NEW MEXICO,  
STATE OF OREGON, and  
STATE OF WYOMING,**

**Plaintiffs,**

Case No., 3:24-cv-00347-AN

**DECLARATION OF TODD BURSKI**

v.

Case No. 3:24-cv-00347-AN  
DECLARATION OF TODD BURSKI

---

**THE KROGER COMPANY,  
ALBERTSONS COMPANIES, INC.,**

**Respondents.**

---

**DECLARATION OF TODD BURSKIE**

COMMONWEALTH OF VIRGINIA  
CITY OF ARLINGTON

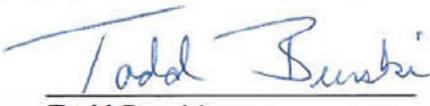
I, Todd Burski, based upon my personal knowledge concerning matters to which I am competent to testify, hereby declare as follows:

1. I am currently a senior counsel at Nestlé USA.
2. Nestlé USA is not a party to *Federal Trade Commission, et. al. v. The Kroger Co., et. al.*, Case No. 3:24-cv-00347-AN.
3. I am familiar with the Declaration of Leonard Michael Luiso, executed on February 15, 2024. Mr. Luiso is an employee of Nestlé USA.
4. I understand that the declaration was provided to the parties to Case No. 3:24-cv-00347-AN, and that the Federal Trade Commission has introduced the document as PX5017.
5. I have reviewed and am personally familiar with Mr. Luiso's declaration. Based on my review of the declaration, my position at Nestlé USA, my deep knowledge of Nestlé USA's business, and my familiarity with the confidentiality protections normally afforded to this type of information by Nestlé USA, I submit that disclosure of the information in Mr. Luiso's declaration to the public or competitors of Nestlé USA would cause serious competitive injury to Nestlé USA.
6. The declaration contains detailed information regarding Nestlé USA's pricing and commercial strategy, along with information regarding how Nestlé USA will approach pricing and commercial strategy in the future. Further, the declaration includes detailed descriptions of Nestlé USA's proprietary method for how customers accrue commercial funds and allowances during their interactions with Nestlé USA. This information is extremely sensitive for Nestlé USA because it is a core part of the customer's relationship with Nestlé USA, affecting pricing, product placement, promotion, sales volume, sales strategies, and marketing strategies, among other areas.
7. The information contained in Mr. Luiso's declaration is not otherwise shared with competitors or the public in the ordinary course of business, and Nestlé USA has undertaken significant efforts to preserve that confidentiality.
8. Nestlé USA took steps to preserve the confidentiality of the document by branding it "HIGHLY CONFIDENTIAL MATERIAL," "CONFIDENTIAL TREATMENT REQUESTED," and "CONTAINED CONFIDENTIAL AND PROPRIETARY BUSINESS SECRETS." Further, I understand that Nestlé USA's outside counsel has communicated with counsel for the parties to this litigation on multiple occasions and reiterated the need to afford the document the highest level of confidential treatment, and

Nestlé USA has consistently assured that the declaration received the highest level of confidential protection under all relevant Protective Orders.

9. If the public or Nestlé USA's competitors learned the information contained in this declaration, it could provide other companies with valuable insight into Nestlé USA's strategies with respect to customer relations, pricing, production promotion, sales, and marketing. This could affect competitive behavior in the marketplace and cause significant competitive harm to Nestlé USA.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

  
\_\_\_\_\_  
Todd Burski

Signed this 8<sup>th</sup> day of October, 2024.

## **CERTIFICATE OF SERVICE**

2 I hereby certify that, on the date set forth below, I caused a true, exact and full copy of  
3 the foregoing DECLARATION OF TODD BURSKI be served on each of the following parties  
4 or persons by the method indicated below:

5	<i>Counsel for the U.S. Federal Trade</i>	
6	<i>Commission</i>	
7	Rohan Pai (rpai@ftc.gov)	Via Electronic Service by the court's E-filing
8	Charles Dickinson (cdickinson@ftc.gov)	system at the party's email address as recorded
9	James H. Weingarten (jweingarten@ftc.gov)	on the date of service in the E-filing system
10	Emily Blackburn (eblackburn@ftc.gov)	
11	Paul Frangie (pfrangie@ftc.gov)	
12	Laura Hall (lhalll@ftc.gov)	
13	Janet Kim (jkim3@ftc.gov)	
14	Kenneth A. Libby (klibby@ftc.gov)	
15	Eric Olson (eolson@ftc.gov)	
16	Harris Rothman (hrothman@ftc.gov)	
17	Albert Teng (ateng@ftc.gov)	
18	Elizabeth Arens (earens@ftc.gov)	Via Email
	Jacob Hamburger (Jhamburger1@ftc.gov)	
	Joshua Smith (jsmith3@ftc.gov)	
	Katherine Drummonds	
	(kdrummonds@ftc.gov)	
	Lily Hough (lough@ftc.gov)	
	Katherine Bies (kbies@ftc.gov)	

19  
20  
21  
22  
23  
24  
25  
26

1	<i>Counsel for Albertsons Companies, Inc.</i>	
2	Edward D. Hassi (thassi@debevoise.com)	Via Electronic Service by the court's E-filing
3	Michael Schaper (mschaper@debevoise.com)	system at the party's email address as recorded
4	Shannon Rose Selden (srselden@debevoise.com)	on the date of service in the E-filing system
5	J. Robert Abraham (jrabraham@debevoise.com)	
6	Natascha Born (nbom@debevoise.com)	
7	James A. Fishkin (james.fishkin@dechert.com)	
8	Michael G. Cowie (mike.cowie@dechert.com)	
9	George L. Paul (gpaul@whitecase.com)	
10	Marieugenia Cardenas (mcardenas@debevoise.com)	Via Email
	Jaime Freilich-Fried (jmfried@debevoise.com)	
11	<i>Counsel for The Kroger Company</i>	
12	Luna Barrington (luna.barrington@weil.com)	Via Electronic Service by the court's E-filing
13	Mark A. Perry (mark.perry@weil.com)	system at the party's email address as recorded
14	Luke Sullivan (luke.sullivan@weil.com)	on the date of service in the E-filing system
15	Sonia K. Pfaffenroth (sonia.pfaffenroth@arnoldporter.com)	
16	Matthew M. Wolf (matthew. wolf@arnoldporter.com)	
17	Jason C. Ewart (jason.ewart@arnoldporter.com)	
18	Joshua M. Davis (joshua.davis@arnoldporter.com)	
19	Matthew M. Shultz (matthew.shultz@arnoldporter.com)	
20	Yasmine Harik (yasmine.harik@arnoldporter.com)	
21	John Holler (john.holler@arnoldporter.com)	
22	Michael B. Bernstein (michael.b.bernstein@arnoldporter.com)	Via Email
23		
24		
25		
26		

1 Dated: October 10, 2024

2 Respectfully submitted,

3 s/ Leslie S. Johnson

4 Leslie S. Johnson [Oregon Bar No. 954727]  
5 Samuels Yoelin Kantor, LLP  
6 [ljohnson@samuelslaw.com](mailto:ljohnson@samuelslaw.com)  
7 111 SW 5th Avenue  
Suite 3800  
Portland, OR 97204

8 and

9 Anna M. Rathbun (*pro hac vice forthcoming*)  
10 Michael G. Egge  
11 Doug Tifft  
12 LATHAM & WATKINS LLP,  
555 Eleventh Street NW  
Suite 1000  
13 Washington, D.C. 20004  
Telephone: (202) 637-2200  
Facsimile: (202) 637-2201  
14 Michael.Egge.@lw.com  
Anna.Rathbun@lw.com  
15 Doug.Tifft@lw.com

16

17

18

19

20

21

22

23

24

25

26